SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term 1968

No. 609

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,

Appellant,

vs.

CITY OF LOS ANGELES, a municipal corporation, and DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,

Appellees.

On Appeal From the Court of Appeal of the State of California, Second Appellate District.

JURISDICTIONAL STATEMENT.

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SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Statutes Involved	3
Questions Presented	3
Statement of the Case	5
How the Federal Question Is Presented	8
The Questions Are Substantial	10
Conclusion	16

INDEX TO APPENDIX

Opinion of the Court of Appeal	17
Opinion and Order for Judgment	27
Conclusions of Law and Judgment	41
Order Denying Rehearing	42
Order Denying Hearing by Supreme Court	43
Statutes of California, First Extraordinary Session, 1964, Ch. 1, p. 103 ("AB 9")	44
California Code of Civil Procedure, Secs. 875-880	49

TABLE OF AUTHORITIES CITED

Cases	Page
Blunt v. Brown, 225 F. Supp. 326	13
Bolling v. Sharpe, 347 U.S. 497	15
Clemons v. City of Los Angeles, 36 Cal. 2d 95, 222 P. 2d 439	7
Construction Laborers v. Curry, 371 U.S. 542	3
Cox v. E. I. DuPont de Nemours and Company, 269 F. Supp. 176	13
Dahnke-Walker Co. v. Bondurant, 257 U.S. 282	3
Dow v. Sunset Tel. & Tel. Co., 162 Cal. 136	5
Fiske v. Kansas, 274 U.S. 380	3
Glona v. American Guarantee Co., 391 U.S. 73	15
Gulf, Colorado & Santa Fe R'y. v. Ellis, 165 U.S. 150	14
Guy F. Atkinson Co. v. Consani, 223 Cal. App. 2d 342, 35 Cal. Rptr. 750	13
Hartford Co. v. Harrison, 301 U.S. 459	15
Holden v. James, 11 Mass. 396	10, 12
Levy v. Louisiana, 391 U.S. 69	4, 15
Loving v. Virginia, 388 U.S. 1	4
Martin v. United States, 162 F. Supp. 441	13
McLaughlin v. Florida, 379 U.S. 184	15
Monahan v. Dept. of Water & Power, 48 Cal. App. 2d 746, 120 P. 2d 730	8
Morey v. Doud, 354 U.S. 457	4, 10, 14, 15
Pope v. Atlantic Coast Line R. Co., 345 U.S. 379	3
Schneider v. Rusk, 377 U.S. 163	15
Sladovich v. County of Fresno, 158 Cal. App. 2d 230, 322 P. 2d 565	7

Page

Taylor & Co. v. Place, 4 R.I. 324 ..... 10, 12

United States v. Brown, 381 U.S. 437 ..... 10, 11

Wilson v. Transit Authority, 199 Cal. App. 2d 716, 19 Cal. Rptr. 59 8

Statutes

Assembly Bill 9 ..3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15

Sec. 1 ..... 6, 8

Sec. 3(a) 6, 8

Sec. 4(a) 6

Sec. 7 7

Sec. 9 7

Sec. 10 7

California Code of Civil Procedure, Sec. 875 6

California Code of Civil Procedure, Secs. 875-880 ..... 3, 5, 7, 13

California Code of Civil Procedure, Sec. 1060 .....2, 7

United States Code, Title 28, Sec. 1257(2) 2, 9

United States Constitution, Art. I, Sec. 10 .....4, 8

United States Constitution, Fourteenth Amendment 4, 8

Textbook

2 Cooley, Constitutional Limitations (8th ed., 1927), p. 809 11

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CITY OF LOS ANGELES, a municipal corporation, and DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,

Appellees.

On Appeal From the Court of Appeal of the State of California, Second Appellate District.

JURISDICTIONAL STATEMENT.

Appellant appeals from the judgment of the court of appeal of the State of California, Second Appellate District, Division Three, reversing a judgment of the superior court which had held unconstitutional a California statute. In reversing that judgment, the court of appeal upheld the validity of the state statute as against challenge on the ground of its repugnancy to the Constitution of the United States. Appellant submits this statement to show that this Court has jurisdiction of the appeal and that substantial questions under the Federal Constitution are presented.

Opinions Below.

The opinion of the court of appeal is reported in Volume 262, Advance California Appellate Reports, at page 144, and in Volume 68, California Reporter, at page 512. The opinion of the superior court is unreported. Copies of the opinions of the court of appeal and of the superior court, together with the conclusions of law and the judgment of the superior court, are appended hereto.

Jurisdiction.

The jurisdiction of this Court is invoked on the following grounds:

1. In this proceeding appellees, the City of Los Angeles and its Department of Water and Power, sought a judicial declaration of the constitutionality of a newly enacted state statute, which created a special exception to the general law respecting contribution among tortfeasors. The declaratory relief action was authorized by section 1060 of the California Code of Civil Procedure pertaining to declaratory relief actions generally.

2. The judgment of the court of appeal was entered on May 13, 1968. That court denied rehearing on June 11, 1968 (Appx. p. 42). On July 10, 1968, the Supreme Court of California denied a hearing (Mr. Justice Mosk voting for a hearing) (Appx. p. 43). Notice of appeal was filed in the court of appeal on September 24, 1968.

3. Jurisdiction is conferred upon this Court by Title 28 of the United States Code, section 1257(2). The validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution

of the United States; the decision of the state court was in favor of its validity. With denial of a hearing by the California Supreme Court on July 10, 1968, the decision of the court of appeal stands as a final determination of the issue so far as the courts of the State of California are concerned.

4. The following cases sustain the appellate jurisdiction of this Court to review the judgment below:

Fiske v. Kansas, (1927) 274 U.S. 380, 385;

Dahnke-Walker Co. v. Bondurant, (1921) 257 U.S. 282, 290;

Construction Laborers v. Curry, (1963) 371 U.S. 542, 550-551;

Pope v. Atlantic Coast Line R. Co., (1953) 345 U.S. 379, 382.

Statutes Involved.

The state statute, the validity of which is involved, is Chapter 1 of the Statutes of the State of California, First Extraordinary Session, 1964 (1 Cal. Stats. Ex. Sess. 1964, c. 1, p. 103). It is set forth at pages 44-48 of the Appendix. Hereinafter (as in the courts below) the statute is referred to as AB [Assembly Bill] 9. AB 9 is limited by its terms to one single past event. The general law out of which AB 9 has carved its solitary exception is found in sections 875-880 of the California Code of Civil Procedure, which were enacted in 1957 and are set forth at pages 49-51 of the Appendix.

Questions Presented.

AB 9 is entitled "An Act relating to contribution among joint and several tortfeasors and declaring the urgency thereof, to take effect immediately," but its terms at once preclude any general application:

"Section 1. This act is applicable only to injuries to person or property and wrongful deaths resulting from the failure of the Baldwin Hills Dam and Reservoir in the City of Los Angeles on December 14, 1963."

The specific questions presented are:

1. Whether AB 9, by legislating a special exception to the general law so as to alter the rights and liabilities with respect to litigation arising from a single past occurrence, is repugnant to the equal protection clause of the Fourteenth Amendment, in that it creates an "arbitrary and invidious discrimination" (*Loving v. Virginia,* (1967) 388 U.S. 1, 10; *Levy v. Louisiana,* (1968) 391 U.S. 69, 70-71) and a "closed class" "not of a generic category" (*Morey v. Doud,* (1957) 354 U.S. 457, 464, 469).

2. Whether AB 9 denies to appellant the protection of due process of law guaranteed by the Fourteenth Amendment, in that, with respect to litigation arising from a single past occurrence expressly designated by the statute, it bestows special privileges on the City of Los Angeles and deprives appellant of substantial rights accorded by the general law.

3. Whether, by thus suspending, ex post facto, the general law of the state and determining from the asserted facts of a past occurrence what special rights and privileges shall be retroactively granted and immunities withdrawn, AB 9 is "trial by legislature," or legislative justice in the manner of a bill of attainder, in violation of Article I, section 10 of the United States Constitution and of the constitutional principle of separation of powers embodied in the due process clause of the Fourteenth Amendment.

Statement of the Case.

The Baldwin Hills Dam and Reservoir, situated in the City of Los Angeles, had been designed, constructed (in 1951) and maintained by appellees. On December 14, 1963, the reservoir collapsed, flooding the nearby area and allegedly causing the deaths of five persons and extensive property damage.

Two months thereafter, at the instance of the city and its Department of Water and Power (appellees herein) (Appx. pp. 27-28), the legislature enacted AB 9, making a specific and solitary exception to the general law of contribution among tortfeasors. This was to accommodate the city's claim that even if it were liable as designer, builder, owner and operator of the reservoir, the production of oil by appellant and other producers in the nearby Inglewood Oil Field may have caused subsidence which contributed to the failure of the reservoir.

In California, except as created by statute, there is no right of contribution among tortfeasors (*Dow v. Sunset Tel. & Tel. Co.*, (1912) 162 Cal. 136, 139-140, 121 Pac. 379, 380-381). In 1957 sections 875-880 of the Code of Civil Procedure were enacted to provide a right of contribution among those tortfeasors against whom a joint judgment had been rendered in a suit by the injured party, *i.e.*, as between defendants in a suit by the injured party, and then only after judgment holding such defendants liable as joint tortfeasors for the specific amount of damages awarded to the

plaintiff.[1] This is the general law which AB 9 changed, solely with respect to Baldwin Hills—December 14, 1963.

The significant provisions of AB 9 are:

Section 1:

> "This act is applicable only to injuries to person or property and wrongful deaths resulting from the failure of the Baldwin Hills Dam and Reservoir in the City of Los Angeles on December 14, 1963."

Section 3(a):

> "Where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them which shall arise when one tortfeasor has discharged by payment the common liability or has paid more than his pro rata share thereof, although judgment has not been rendered against all or any of them in an action on the tort."

Section 4(a):

> "The pro rata share of each tortfeasor shall be determined by dividing the entire common liability equally among all of them."

---

[1] "(a) Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as herein provided.

* * * *

"(c) Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof" (Code Civ. Proc., sec. 875; Appx. pp. 49-50).

Section 7 declared that:

> "* * * it appears to the Legislature that an actual controversy respecting the constitutionality of this act exists * * *"

and the section went on to authorize the institution of an action for a declaratory judgment as to AB 9's constitutionality before the payment of any claims. Appellees did not pursue this remedy, but proceeded under the existing general declaratory judgment statute.[2]

Section 9 provided:

> "If Section 1 of this act is held invalid, this entire act is invalid."

Section 10 declared that the act was an "urgency measure" necessary to mitigate the hardships suffered by the victims of the dam's failure and that:

> "The remedies provided by this act are necessary to cope with this situation and must be available immediately."

The California legislature had twice refused to enact general legislation permitting prejudgment contribution as now specially authorized solely for Baldwin Hills—December 14, 1963. The first occasion was in 1957 at the time of enactment of the general law, sections 875-880 of the Code of Civil Procedure. The second was in February, 1964, when AB 9 was initially proposed in the legislature. As first introduced in and passed by the State Assembly, AB 9 would have applied uniformly to all tortfeasors. The State Senate subsequently amended the Act, with the Assembly's concurrence, to include

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[2]An action for a declaration as to constitutionality was already authorized by section 1060 of the California Code of Civil Procedure. See *Clemons v. City of Los Angeles,* (1950) 36 Cal. 2d 95, 97, 222 P. 2d 439, 440; *Sladovich v. County of Fresno,* (1958) 158 Cal. App. 2d 230, 238, 322 P. 2d 565, 569.

the provision in section 1 which restricted AB 9 to the particular single past event of December 14, 1963 (Appt's. Petn. for Hrg. Cal. Supr. Ct., pp. 3-4). Thus, by the enactment of AB 9, California, for the first time and for only one past event and no other, authorized the initiation of an independent suit by a tortfeasor for contribution from another who had not been adjudged liable to the injured person.

With the privileges newly bestowed by AB 9 at hand, appellees negotiated settlements with the flood victims. Allegedly appellees and their insurance carriers paid in excess of $12,000,000. Then, claiming the right to sue for contribution by virtue of AB 9 and necessarily conceding that they have "become jointly and severally liable in tort" (AB 9, sec. 3(a)),[3] appellees instituted this action for a declaration of AB 9's constitutionality.

How the Federal Question Is Presented.

The sole relief sought by the complaint was a declaration of AB 9's constitutionality. In the superior court, appellant filed a general demurrer to the complaint and a memorandum of points and authorities in support thereof [Clk. Tr. pp. 16-32]. While appellant in the memorandum argued, inter alia, that the complaint failed to plead facts indicating the existence of a justiciable controversy, appellant spelled out the constitutional infirmities of AB 9, specifically including the asserted violations of Article I, section 10 and of the Fourteenth Amendment of the United States Constitu-

[3]Had they not claimed this status, the action would have been only a request for an advisory opinion, not authorized under California law. See *Wilson v. Transit Authority*, (1962) 199 Cal. App. 2d 716, 722, 19 Cal. Rptr. 59, 62-63; *Monahan v. Dept. of Water & Power*, (1941) 48 Cal. App. 2d 746, 751, 120 P. 2d 730, 732-733.

tion, and stated that it "asserts such invalidity on this demurrer for the purpose of raising the point at the earliest possible stage of the proceeding" [Clk. Tr. p. 25]. After argument and submission of the demurrer, the trial court, under date of August 5, 1965, issued this order:

> "Submission vacated.
>
> "It appears to the Court there is considerable doubt of the constitutionality of the statute. The matter is therefore continued to September 14, 1965 at 9:45 A.M. in Department 15 of this Court, for full argument and briefing on the point.
>
> "Counsel notified by mail."

Thereafter the validity of AB 9 under both the State and Federal constitutions was briefed and argued before the trial court. On December 5, 1965, the trial court issued its opinion and order for judgment, holding that "the law in question is prohibited special legislation and that no valid basis of classification was shown to exist" (Appx. p. 35). Appellees appealed to the court of appeal on the single issue of the constitutionality of the legislation.

Thus, the sole relief sought by the complaint was a declaration of AB 9's constitutionality, which was the only substantive issue decided by the trial court and the court of appeal. The latter court read the statute as making a classification of "Baldwin Hills tortfeasors" and determined that there had been no violation of equal protection or due process and no unconstitutional attempt by the legislature to exercise judicial powers (Appx. pp. 21-25). The decision of the court of appeal, upholding the constitutionality of AB 9, brings the case squarely within the provisions of United States Code, Title 28, section 1257(2).

The Questions Are Substantial.

The case is novel and of an importance to warrant plenary consideration by this Court. Its unprecedented character is evidenced by the difficulty in finding situations factually comparable. Any search for similar legislative action must range back to cases which arose more than a century ago, and in which the courts struck down legislative attempts to make special rules for particular, identifiable cases.[4]

If a state legislature can lawfully enact AB 9, it can permissibly prescribe a different rule for any other past occurrence which is followed by public clamor or which involves parties having sufficiently powerful political influence. In this respect AB 9 is trial by legislature, or legislative justice, an attempt to determine from the asserted facts of a past occurrence what relief should be made available retrospectively.

Such action plainly violates due process through legislative invasion of judicial prerogatives (cf. *United States v. Brown,* (1965) 381 U.S. 437, 442-444, 446). It is fundamental that the determination of liability for past events is a judicial function to be exercised in the light of the general laws in force at the time.

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[4] *Taylor & Co. v. Place,* (1856) 4 R.I. 324, invalidating legislation granting a new trial in a specific, named case for the avowed purpose of permitting certain of the parties to produce further evidence; *Holden v. James,* (1814) 11 Mass. 396, invalidating legislative suspension of the statute of limitations with respect to the claims of a named individual against a specified decedent's estate.

In this regard, this Court has emphasized:

> " 'Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.' *Louisville Gas Co. v. Coleman,* 277 U.S. 32, 37-38; *Hartford Co. v. Harrison,* 301 U.S. 459, 462" (*Morey v. Doud,* (1957) 354 U.S. 457, 464).

In the *Brown* case this Court said (381 U.S. 442):

> "The best available evidence, the writings of the architects of our constitutional system, indicates that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature."

And (381 U.S. 446):

> "'It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments.' *Fletcher v. Peck*, 6 Cranch 87, 136."

To put it another way:

> "The legislature may suspend the operation of the general laws of the State; but when it does so the suspension must be general, and cannot be made for individual cases or for particular localities. * * * [E]very one has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments" (2 Cooley, Constitutional Limitations (8th ed., 1927) 809).

The principles stated in the quotation above exactly fit the situation here. The operation of the general laws has been suspended for an individual case, which has been singled out "as one to be regulated by a dif-

ferent law from that which is applied in all similar cases."

That AB 9 subjects appellant to the "invidious discrimination" which the equal protection and due process clauses condemn cannot be doubted. Under the general law, appellant and others who might be the target of claims for contribution are immune from a judgment or order of contribution unless and until the victim of the tort brings an action against them and recovers judgment. This immunity the single-event legislation of AB 9 would wipe out as to appellant, while preserving it as to all others who might be involved in any type of accident, slight or catastrophic, with a single victim or hundreds—every conceivable tort situation, in fact, other than Baldwin Hills-December 14, 1963.

We have referred above (*supra,* p. 10, n. 4) to early cases in which legislatures attempted similarly to erase an immunity of parties to specific litigation; *i.e.,* the legislation purporting to suspend the statute of limitations with respect to the claims of a named individual against a specific decedent's estate in *Holden v. James,* (1814) 11 Mass. 396; and legislation granting a new trial in a specific, named case for the avowed purpose of permitting certain of the parties to produce further evidence in *Taylor & Co. v. Place,* (1856) 4 R.I. 324. Such bare-faced legislative discrimination would hardly be dreamed of, much less condoned, today; yet the immunity of appellant here under the general law, which AB 9 would take away, is no less substantial.[5]

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[5]These cases illustrate the speciousness of the assertion of the court below (Appx., pp. 24-25) that "AB 9 makes no determinations of fact against anyone nor does it adjudicate the rights or liabilities of any parties." The same is true of the legislation in *Holden v. James* and *Taylor & Co. v. Place, supra.* While in-

Conversely, as to the one accident, AB 9 gives special privileges to appellees and their insurance carriers by creating rights not available to tortfeasors liable for any other accident. Obviously a cause of action is conferred which is denied by the general law, with all of the practical advantages of control over the litigation. Under AB 9, appellees, rather than the victims, select the parties which they (the appellees) claim to be liable, and in this way may affect the amount of contribution from any other party subsequently found to be jointly or severally liable. Also, appellees alone might determine the extent of damages through the settlement they negotiate with each injured party.[6]

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herently invidious, neither the legislative grant of a new trial nor the suspension of the statute of limitations determined the rights or liabilities of any party, which would depend on the outcome of the projected further litigation. The California court of appeal seems to be saying that anything short of direct legislative compulsion of the outcome of a particular case is constitutionally inoffensive. Such is obviously not the law.

[6]That the special privileges accorded appellees by AB 9 are substantial is demonstrated by *Guy F. Atkinson Co. v. Consani*, (1963) 223 Cal. App. 2d 342, 345-346, 35 Cal. Rptr. 750, 752. In that case both Atkinson and Consani had been sued as joint tortfeasors. The former was found liable while the jury's verdict was in favor of the latter. After paying the judgment Atkinson attempted to appeal the exoneration of Consani, claiming prejudicial error in the instructions. The appeal was dismissed, the court holding that Atkinson was not an aggrieved party because under the general contribution law, sections 875-880 of the Code of Civil Procedure, no cause of action in favor of Atkinson arose until there was a judgment against Consani.

In contrast, in a proceeding for contribution under AB 9, appellees would have the right to appeal from a judgment exonerating appellant or any other defendant. Also in point here are cases holding that the right to contribution is an issue of substantive law (*Blunt v. Brown*, (S.D. Iowa 1963) 225 F. Supp. 326, 328; *Cox v. E. I. DuPont de Nemours and Company*, (D. S.C. 1967) 269 F. Supp. 176, 178; *Martin v. United States*, (E.D. Pa. 1958) 162 F. Supp. 441).

In addition, AB 9 expands the right of contribution accorded appellees to include several (*e.g.,* successive) as well as joint tortfeasors—clearly working another substantive change in the general law (which is confined to contribution between joint tortfeasors) by requiring equal contribution from several tortfeasors who may not be equally at fault.

Neither the number of persons injured at Baldwin Hills nor any complexity of issues of causation—the justification urged by the court below—can save AB 9 from the vice of arbitrary selection. The statute must stand or fall on the standard which the legislature defined. It marked no line of classification according to the number of claimants, or cases involving complex issues of causation, or even dam failures. As this Court said in *Morey v. Doud,* (1957) 354 U.S. 457:

> "If the exception is to be upheld, it must be on the basis on which it is cast—an exception of a particular business entity and not of a generic category" (p. 464).

Actually, of course, there was no classification, but rather the deliberate bestowal of benefits on appellees alone, with accompanying denial of due process and equal protection to appellant. The correct rule was stated by this Court long ago:

> "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this" (*Gulf, Colorado & Santa Fe R'y. v. Ellis,* (1897) 165 U.S. 150, 159)—

cited many times with approval. See for example, *McLaughlin v. Florida,* (1964) 379 U.S. 184, 190; *Hartford Co. v. Harrison,* (1937) 301 U.S. 459, 462.

This Court has continually been vigilant to safeguard against arbitrary and discriminatory state legislation (*e.g., Morey v. Doud,* (1957) 354 U.S. 457; *Levy v. Louisiana,* (1968) 391 U.S. 68; and *Glona v. American Guarantee Co.,* (1968) 391 U.S. 73—all cited to the lower court but not mentioned in its opinion). It will be recalled that in *Levy* and *Glona* this Court invalidated Louisiana legislation which granted a remedy for wrongful death but specifically excepted as beneficiaries those persons whose relationship to the decedent was illegitimate. The Louisiana statute established at least the semblance of a "class" (all past, present and future illegitimates). The state statute held invalid in those cases would have approached the extreme restrictiveness of AB 9 if it had made an exception to the general law only as to illegitimate children conceived on December 14, 1963, in Baton Rouge.

Furthermore, it is clear that legislation which makes an unjustifiable discrimination also violates the constitutional requirement of due process of law (*Schneider v. Rusk,* (1964) 377 U.S. 163, 168; *Bolling v. Sharpe,* (1954) 347 U.S. 497, 499-500). The latter cases were also cited to the court below but are not referred to in its opinion.

Conclusion.

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

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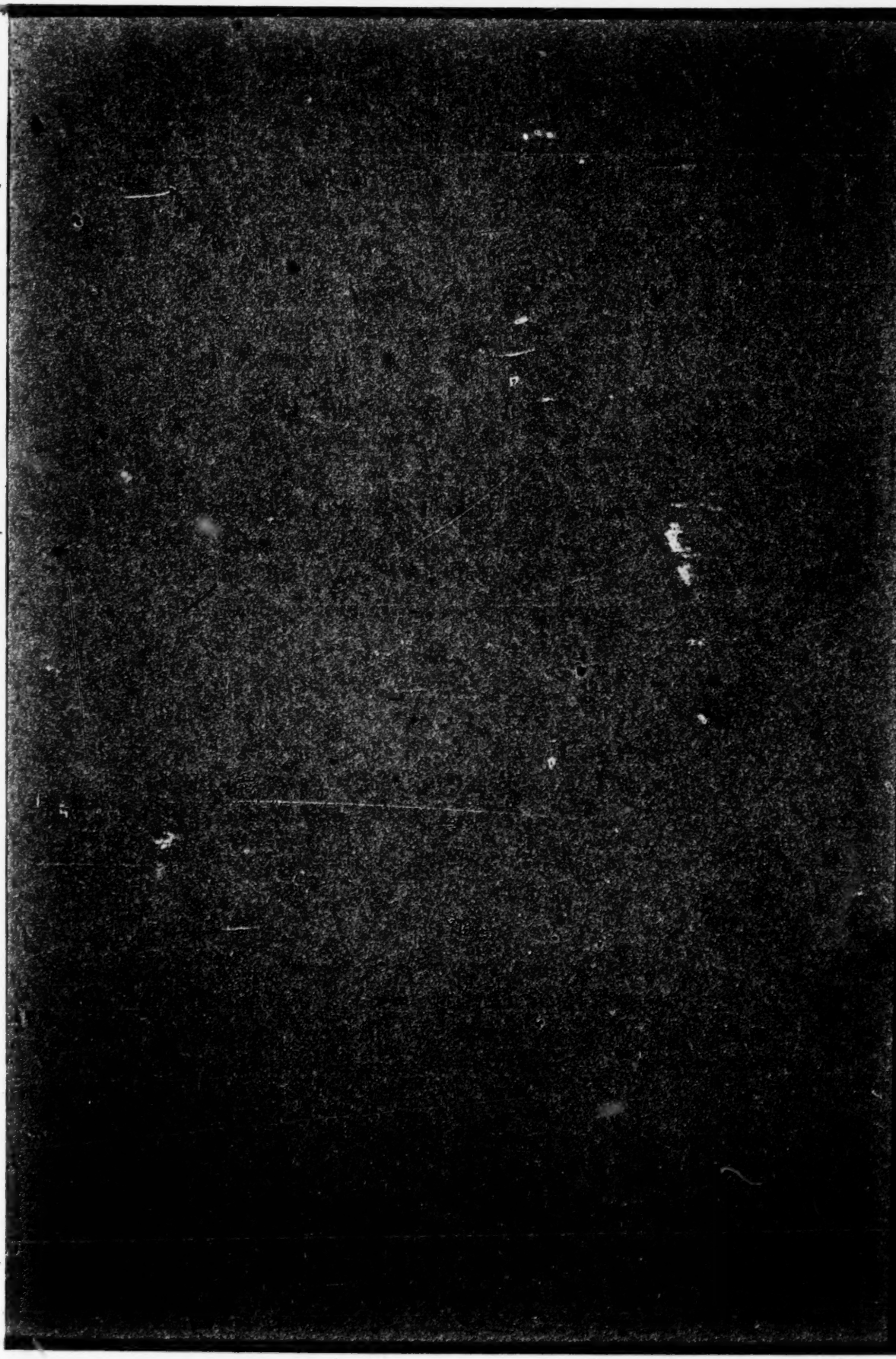
Dated: October, 1968.

(APPENDIX FOLLOWS)



APPENDIX.

Opinion of the Court of Appeal.

[Civ. No. 30751, Second Dist., Div. Three. May 13, 1968.]

City of Los Angeles et al., Plaintiffs and Appellants, v. Standard Oil Company of California, Defendant and Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County. Leon T. David, Judge. Reversed.

Action for declaratory relief to determine that a statute relating to contribution among tortfeasors responsible for the Baldwin Hills Reservoir disaster is constitutional. Judgment sustaining defendant's demurrer reversed.

Roger Arnebergh, City Attorney, Gilmore Tillman, Assistant City Attorney, Desmond J. Bourke, Deputy City Attorney, Kirtland & Packard, Robert C. Packard, Dennis Keenan, Ellis J. Horwitz, and Henry E. Kappler for Plaintiffs and Appellants.

Lawler, Felix & Hall, Marcus Mattson, R. F. Outcault, Jr., and James N. Ries for Defendant and Respondent.

McCutchen, Black, Verleger & Shea, Philip K. Verleger, Max K. Jamison, Jerome A. Hoffman, Kaplan, Livingston, Goodwin, Berkowitz & Selvin, and Sims Hamilton as Amici Curiae on behalf of Defendant and Respondent.

MOSS, J.—The complaint seeks a declaration that a statute enacted by the Legislature in 1964 relating to contribution among tortfeasors responsible for the

Baldwin Hill Reservoir disaster in December 1963[1] is constitutional. Although several oil companies and other persons are named as defendants in the complaint, only respondent Standard Oil Company of California appeared in the action. The demurrer of respondent was sustained on the sole ground that the statute is unconstitutional in that it is special legislation based upon an invalid classification. The trial court entered a judgment declaring that the plaintiffs are not entitled to the declaration of constitutionality they seek.[2] Plaintiffs appeal from the judgment.

The complaint alleges in substance that: From 1924 to the present the named defendants have extracted petroleum, water and natural gas from the Inglewood Oil Field; in 1951 plaintiff Department of Water and Power built the Baldwin Hills dam and reservoir in the City of Los Angeles on a site adjacent to the Inglewood Oil Field; the drilling operations of the defendants caused the surface area of the oil field and surrounding properties to subside; the subsidence caused the Baldwin Hills dam to collapse and the reservoir to flood the surrounding area; the flood caused severe damage to the property of more than 3700 property owners, killed at least five persons, and injured many others; the victims of the flood were in urgent need of funds to mitigate their suffering and to restore the damaged community; litigation to determine the parties

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[1]The statute involved is Chapter 1 of the Statutes of the State of California, First Extraordinary Session 1964, and will be referred to in this opinion as "AB 9."

[2]It was proper for the court to make this declaration in the course of sustaining the demurrer. *(Wilson v. Civil Service Com.,* 224 Cal.App.2d 340, 344 [36 Cal.Rptr. 559].) The parties do not contest this point.

responsible for the losses would require an extended period of time and would frustrate prompt settlement of loss claims; plaintiffs paid a reasonable amount for the claims of those who were injured in the flood; the aggregate amount of claims paid exceeds $12,000,000; in the event plaintiffs are held jointly liable for the flood damage they are entitled to contribution from the defendants by reason of the provisions of AB 9; an actual controversy exists between plaintiffs and defendants as to the constitutionality of AB 9.

AB 9 is entitled "An act relating to contribution among joint and several tortfeasors, and declaring the urgency thereof, to take effect immediately." The text of AB 9 is set out in the appendix to this opinion. By its terms AB 9 is made applicable only to injuries resulting from the failure of the Baldwin Hills dam and reservoir on December 14, 1963. (§ 1.) The principal distinction between the right created by AB 9 and the general California law on contribution among joint tortfeasors arises by reason of section 3(a) of AB 9. Section 3(a) provides for a right of contribution among joint or several tortfeasors which "shall arise when one tortfeasor has discharged by payment the common liability or has paid more than his pro rata share thereof, although judgment has not been rendered against all or any of them in an action on the tort." Section 875 subdivision (c) of the Code of Civil Procedure, on the other hand, provides that the "right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof."

It is respondent's principal contention on appeal that AB 9 violates all the constitutional guarantees against

special and arbitrary legislation[3] because it provides for a different right of contribution among tortfeasors who may be liable for injuries caused by the Baldwin Hills dam disaster from that applicable to tortfeasors in general. This contention is without merit.

In response to a similar contention the Supreme Court set forth the governing law as follows: "The contention that the section in question lacks uniformity, grants special privileges and denies equal protection of the laws, is also without merit. None of these constitutional principles is violated if the classification of persons or things affected by the legislation is not arbitrary and is based upon some difference in the classes having a substantial relation to the purpose for which the legislation was designed. [Citations] A law to be general in its scope need not include all classes of in-

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[3]The constitutional provisions upon which respondent relies in support of this contention are as follows: "All laws of a general nature shall have a uniform operation." (Cal. Const., art. I, § 11.) "No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens." (Cal. Const., art. I, § 21.) "The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: . . . Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity. . . .

"Thirty-Third—In all other cases where a general law can be made applicable." (Cal. Const., art. IV, § 25.)

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (U.S. Const., amend. XIV, § 1.)

AB 9 was enacted before the constitutional revision adopted two years later. In place of art. IV, § 25 the revised constitution substituted art. IV, § 16, which reads: "A local or special statute is invalid in any case if a general statute can be made applicable." The changes do not constitute a change in meaning. (See Cal. Const. Rev. Com. Proposed Revision of California Constitution, p. 39, State Printing Office, 1966.)

dividuals in the state. Nor is a classification void because it does not embrace within it every other class which might be included. [Citations] Wide discretion is vested in the Legislature in making the classification and every presumption is in favor of the validity of the statute; the decision of the Legislature as to what is a sufficient distinction to warrant the classification will not be overthrown by the courts unless it is palpably arbitrary and beyond rational doubt erroneous. [Citations] A distinction in legislation is not arbitrary if any set of facts reasonably can be conceived that would sustain it." (*Sacramento Municipal Utility Dist. v. Pacific Gas & Elec. Co.,* 20 Cal.2d 684, 693 [128 P.2d 529].)

Applying these rules to AB 9 we cannot say that the classification among tortfeasors provided therein is palpably arbitrary and without a reasonable basis. The reason why AB 9 was enacted is stated in the statute. After reciting the basic facts of the Baldwin Hills dam disaster, section 10 recites, "The victims of the flood are in urgent need of funds to mitigate the hardships which they are suffering and to restore the damaged homes and business properties. The remedies provided by this act are necessary to cope with this situation and must be available immediately." While it is a judicial question whether a general law could have been made applicable to accomplish the purposes of the special law, the declaration in the special law as to the reasons for its enactment should not be ignored. (*Solvang Municipal Improv. Dist. v. Jensen,* 111 Cal.App. 2d 237, 240 [244 P.2d 492].) The widespread havoc caused by the collapse of the Baldwin Hills dam was reason enough to justify the enactment of legislation to

encourage the parties liable for the damage to settle the claims against them prior to judgment. The general contribution statute deters such settlements because under Code of Civil Procedure section 875 a tortfeasor who settles a claim before rendition of judgment therefor loses the right to seek contribution against other persons who may be liable for the same injury. (See *Guy F. Atkinson Co. v. Consani,* 223 Cal.App.2d 342, 345-346 [35 Cal.Rptr. 750].) The Baldwin Hills dam disaster created a unique problem in that the number of persons injured therein was much greater than in the usual case and the issue of causation is unusually complex. By reason of these factors the need for legislation to encourage settlement was particularly acute.

Respondent urges, however, that if the Legislature desired to change the rule for contribution among the tortfeasors liable for the Baldwin Hills injuries it was required by the federal and state constitutions to extend the change to all tortfeasors rather than to confine it to those responsible for the Baldwin Hills flood. "If good ground for the classification exists, such classification is not void because it does not embrace within it every other class which might be included." (*Heron v. Riley,* 209 Cal. 507, 518 [289 P. 160]; see *Matter of Petition of Burke,* 160 Cal. 300, 303 [116 P. 755].) Good ground exists for the distinction made in AB 9 between the parties responsible for the Baldwin Hills damage and tortfeasors who may be liable for a common injury in general. A rule which permits a right of contribution among tortfeasors to arise prior to judgment, while it tends to encourage out-of-court settlements, also tends to promote a multiplicity of litigation

because it permits a tortfeasor against whom judgment has been rendered to bring a new and separate suit for contribution against other alleged tortfeasors not named in the judgment. The issues of liability and damages already litigated in the action brought against the judgment tortfeasor must be tried again in the contribution action. (See Prosser, Law of Torts, 3rd Ed. (1964) p. 277.) The Legislature did not act arbitrarily in refusing to make a change in the general law that could have the possible effect of proliferating the general run of tort litigation.

No constitutionally protected rights of the Baldwin Hills tortfeasors are impaired by AB 9. They are entitled under AB 9 to a judicial determination of their liability and the amount thereof to the same extent as other tortfeasors. It is true that AB 9 does expand the class of persons who can subject them to suit since under the general law the choice of defendants is with the injured claimants whereas under AB 9 the choice is also given to other tortfeasors. However, no Baldwin Hills tortfeasor had any constitutionally protected right to avoid paying for the consequences of its tort merely because some of the injured claimants might have chosen to seek redress from other tortfeasors. (See *Augustus v. Bean*, 56 Cal.2d 270, 272, [14 Cal. Rptr. 641, 363 P.2d 873].) This case is distinguished from *Board of Education v. Alliance Assur. Co.*, 159 F. 994 and *Coolidge v. Standard Acc. Ins. Co.*, 114 Cal.App. 716 [300 P. 885], relied upon by respondent, in that in those cases the statute which was declared to be invalid imposed a special burden of pleading and proof upon insurance companies thereby placing them in an unequal and disadvantageous position as to all

actions affected by the statute where no reason appeared for the statute other than to favor the claimants under the insurance policies. Such cases as *Stout v. Democratic County Central Committee,* 40 Cal.2d 91 [251 P.2d 321]; *Hollman v. Warren,* 32 Cal.2d 351 [196 P.2d 562]; *Consolidated Printing & Publishing Co. v. Allen,* 18 Cal.2d 63 [112 P.2d 884]; *Austin v. Lambert,* 11 Cal. 2d 73 [77 P.2d 849, 115 A.L.R. 849]; *Ventura County Harbor Dist. v. Board of Supervisors,* 211 Cal. 271 [295 P. 6]; *Franchise Motor Freight Assn. v. Seavey,* 196 Cal. 77 [235 P. 1000] do not aid respondent. They all dealt with factual situations in which there was no conceivable lawful reason for the classification made in the legislation.

Respondent asserts that AB 9 cannot be justified as disaster relief legislation because that purpose is not reflected in its title. As noted above the title of AB 9 indicates that it concerns contribution among tortfeasors and is an urgency measure. The title naturally suggests to the mind the field of legislation which is included in the text of the act, and, therefore, complies with the requirement of article IV section 24 (now § 9) of the Constitution that the subject of an act shall be expressed in its title (*Metropolitan Water Dist. v. Marquardt,* 59 Cal.2d 159, 173-174 [28 Cal.Rptr. 724, 379 P.2d 28]; *Orange County Water Dist. v. Farnsworth,* 138 Cal.App.2d 518, 526 [292 P.2d 927].) Although the Legislature did not refer to disaster relief in the title of AB 9, its purpose in affording such relief is amply shown by the recitals and declarations in the text of the act.

Respondent contends that AB 9 is an unconstitutional attempt to exercise judicial powers. AB 9 makes no

determinations of fact against anyone nor does it adjudicate the rights or liabilities of any parties. Therefore, it is unlike the legislative acts considered in the cases relied upon by respondent. (*United States v. Brown,* 381 U.S. 437 [14 L.Ed. 2d 484, 85 S.Ct. 1707]; *Taylor & Co. v. Place* (1856) 4 R.I. 324; *Traux-Traer Coal Co. v. Compensation Comr.,* 123 W.Va. 621 [17 S.E.2d 330].)

Amici curiae are three oil companies which, according to their brief, played a minor role in the development of the Inglewood Oil Field. They are named as defendants in the complaint, but were not served and are not parties to the action. They are concerned that AB 9 changes the rule of law which holds that tortfeasors whose liability is several rather than joint are each liable only for their own contribution to the common injury. Amici curiae contend that AB 9 requires that whether or not their liability is joint or several the contribution of each tortfeasor must be determined by dividing the entire common liability equally among all of them. (See § 4 (a).) They ask that this court declare AB 9 unconstitutional to the extent that it requires a pro rata contribution from them if they are found to be several rather than joint tortfeasors.

An essential requirement of a declaratory relief action "is that there is a real controversy between parties, involving *justiciable questions* relating to their rights and obligations. Facts and not conclusions of law must be pleaded which show a controversy of concrete actuality as opposed to one which is merely academic or hypothetical." (*Wilson v. Transit Authority,* 199 Cal. App.2d 716, 722 [19 Cal.Rptr.59].)

Nothing in the record indicates that either appellants or respondent assert the construction of AB 9 which amici curiae fear. The complaint alleges only that plaintiffs "contend that in the event that plaintiffs are jointly liable for such damages that plaintiffs are entitled to contribution from the defendants on the basis of" AB 9 and that "an actual controversy exists between plaintiffs and defendants as to the constitutionality of" AB 9. No facts are alleged in the complaint which indicate that the liability of any of the defendants is several rather than joint. In their brief filed in reply to that of amici curiae appellants argue that AB 9 does not require pro rata contribution from defendants whose liability is found to be several because section 3(b) provides, "Such right of contribution shall be administered in accordance with the principles of equity." It appears, therefore, that the controversy about which amici curiae are concerned is hypothetical and not actual.

The record reflects that the plaintiffs have commenced another action for the recovery of damages allegedly incurred by them as a result of claims asserted against them by reason of the failure of the Baldwin Hills dam, in which action amici curiae have appeared as defendants. Facts may develop in that action which render the questions raised here by amici curiae of more than academic interest. The point is not properly raised on this appeal.

The judgment is reversed.

Ford, *P. J.*, and Frampton, *J.* pro tem.,* concurred.

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*Retired judge of the Superior Court sitting under assignment by the Chairman of the Judicial Council.

NOTE: The Appendix to the Court of Appeal decision consists of the full text of AB 9. It is omitted at this point, since it appears independently at pages 44-48, *infra,* this Appendix.

Opinion and Order for Judgment.

Superior Court of the State of California, for the County of Los Angeles.

City of Los Angeles, etc., et al., Plaintiffs vs. Standard Oil Company of California, etc., et al., Defendants. No. C-858622.

The complaint herein alleges and the Court judicially notices that on December 14, 1963, there was a failure of the Baldwin Hills Reservoir which brought death to some, and destruction to real and personal property of over 2,000 persons. Many of these were left homeless and destitute. The determination of ultimate responsibility for the injury and damage required detailed future investigation and scientific opinions. There was public speculation as to the causes, which included assertions that the Reservoir was constructed on a known earthquake fault and that it was possible that the extraction of oil and gas in neighboring oil fields had caused or contributed to the ultimate Dam failure. It was obvious that, in the ordinary course of events, the legal liability to the property owners and injured parties would take months, if not years, to determine in the ordinary litigation processes.

The City and its insurance carriers, faced with the emergency situation, were willing to pay the damage claims provided that this would not impair their right to contribution or recompense if others than the City were found liable.

In 1957, the Legislature enacted C.C.P. Sections 875-880 permitting one of several joint tortfeasors, after judgment, to secure contribution where it had discharged

more than its proportionate liability under the judgment. The cause of action for such contribution had been held to arise only following judgment and the payment by such one of more than its share of the liability.

Following the Dam disaster, an amendment to C.C.P. Section 875 was sought, to allow one of several potential tortfeasors generally to pay first and to litigate their liability later. Such a general statute was not passed. The Legislature, however, passed the act commonly referred to as Assembly Bill 9, which is Statutes 1964, Chapter 1, First Extraordinary Session.

That Act provides in Section 1: "This act is applicable only to injuries to person or property and wrongful deaths resulting from the failure of the Baldwin Hills Dam and Reservoir in the City of Los Angeles on December 14, 1963 * * *"

Section 3 of this Act provides:

"(a) Where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them which shall arise when one tortfeasor has discharged by payment the common liability or has paid more than his pro rata share thereof, *although judgment has not been rendered against all or any of them in an action on the tort.* (Italics ours.)

"(b) Such right of contribution shall be administered in accordance with the principles of equity.

"(c) Such right of contribution shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any

tortfeasor be compelled to make contribution beyond his own pro rata share of the common liability.

* * *

"(e) A liability insurer who by payment has discharged the common liability of a tortfeasor shall be subrogated to his right of contribution.

* * *"

Section 6 of the Act provides that whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

Section 7 provides that "Inasmuch as it appears to the Legislature that an actual controversy respecting the constitutionality of this act exists, and that failure to resolve this controversy at an early date will likely frustrate the purposes of this act, any person or entity against whom has been asserted any claim arising out of the event described in Section 1 and who alleges that if he were to pay all of such claim, he would expect to seek contribution from another or others pursuant to this act, may bring an action. Such action shall have priority as do other actions for declaratory relief pursuant to Section 1062a of the Code of Civil Procedure." Thus it appears that the Legislature not only has enacted a special rule of contribution respecting the claims in question, but perhaps has modified the preexisting provisions of law respecting declaratory relief. (C.C.P. Sec. 1060-1062a.)

The demurrer reaches only the contents of the Complaint and such other matters as may be judicially noticed. (*Weil v. Barthel,* 45 Cal. 2d 835, 837.) The

allegations of the Complaint are assumed to be true in determining that, if proved, the plaintiffs' right to relief would exist. It must be assumed that plaintiffs can prove the facts alleged. (*Schafer v. Berinstein,* 140 Cal. App. 2d 278, 288.)

I

The demurrer to the Complaint tenders a number of issues which can be readily resolved:

1. The general demurrer does not lie to the complaint for declaratory relief (cf. *Weil v. Barthel,* 45 Cal. 2d, at page 842, citing 15 Cal. Jur. page 164, section 36, "Declaratory Relief"). In this respect, a demurrer to a complaint for declaratory relief is unique, since the relief afforded by way of declaration may be either affirmative or negative. Declaratory relief is proper in this instance and need not be based upon the statute here under attack. (*L.A. Transit Lines v. Dawson,* 105 Cal. App. 2d 576; *Mefford v. City of Tulare,* 102 Cal. App. 2d 919, 922.) When, as here, the essence of the general demurrer interposed involves the construction and validity of a statute, the ruling on the legal question may constitute the declaratory relief itself. Therefore, it is proper to consider the general demurrer here as a motion for Judgment on the Pleadings, and to give judgment accordingly.

2. The plea of "another action pending" as a ground of demurrer is overruled, after consideration of the files and such other action which show that service upon the defendants in that action has not been made. (*Muniga v. Superior Court,* 225 Cal. App. 2d 280.)

3. In this cause, all indispensable or necessary parties are before the Court. C.C.P. Section 139.) Demurrer for want of proper parties is overruled.

4. The motion to strike paragraphs X, XI and XII of the Complaint is denied. The allegations, although somewhat evidentiary in character, are necessary to establish the bounds of the controversy for declaratory relief.

II

It is agreed by plaintiffs and defendants that the sole question presented by the lawsuit and upon the hearing of the general demurrer is this: In the event plaintiffs are held jointly liable with defendants for wrongful death, personal injury or for property loss or damage arising out of the disaster of December 14, 1963, are plaintiffs entitled to contribution under Statutes 1964, Chapter 1, First Extraordinary Session (referred to herein as A.B. 9)? Section 1 of the Act limits its application to this disaster alone, and Section 9 provides: "If Section 1 of this act is held invalid, this entire act is invalid."

At the outset, we reject the contention that the Act (if valid against the other attacks made upon it) is an invasion of the judicial process by the Legislature or a breach of the separation of powers concept embraced in our Constitution. It is to be noted that the Act does not create any liability at all. It simply provides that, if two parties are joint tortfeasors, that one who has discharged the obligation resting upon them jointly and severally by more than its adequate part is entitled to contribution by the other. This does not outrage any sense of fairness or other concept of due process of law. All contribution statutes in effect cut down the liability which otherwise a wrongdoer severally could be compelled to discharge. It has been held

that this is entirely within legislative discretion, and that it is a mere change in remedy and not in right.

Augustus v. Bean, 56 Cal.2d 270, 272

Pierce v. Turner, 205 Cal. App. 2d 264

Hudson v. Hutchason, 171 Cal. App. 2d Supp. 869, 871; 340 Pac. 2d 756

Pennsylvania Greyhound Lines, Inc. v. Rosenthal, 102 Atlantic 2d 587, 591; 14 N.J. 372

Deuscher v. Cammerano, 176 N.E. 412, 256 N.Y. 328

Halifax Check Express, Inc. v. Young (Del.), 137 Atlantic 2d 743, 745

The net effect of A.B. 9 is to permit unilateral payments made by one joint tortfeasor before judgment, as well as those made after judgment, to be considered in determining contribution.

In some cases it is stated that where a legislative classification is brought into question before a court, the court will presume that the Legislature had before it facts which would sustain the classification made. In other cases it is said that in any situation where the validity of classification is doubtful, the doubts will be resolved in favor of the legislative declaration.

But a court cannot avoid adjudicating questions of constitutionality, however, merely out of deference to the coordinate branch of government. The validity of classification is always open to question in the courts if it shall appear to be unreasonable or a mere device to evade the constitutional provisions. In A.B. 9 we are not left to guess the factors which animated the Legislature since they are declared in the Act itself. In enacting A.B. 9 the Legislature itself expressly

stated the existence of the constitutional problem; and by providing for declaratory relief, the Legislature here directly invited and authorized judicial scrutiny.

Where the classification made by the Legislature is palpably arbitrary and beyond rational doubt erroneous, the decision of the Legislature is not conclusive upon the courts.

In re *Herrera*, 23 Cal. 2d 206, 212

Johnson v. Sup. Ct., 50 Cal. 2d 693, 699

Professional Fire Fighters, Inc. v. City of L.A., 60 Cal. 2d 276, 288

Sacramento Mun. Utility Dist. v. Pac. Gas & Elect., 20 Cal. 2d 684, 693.

Where the classification is unreasonable, the courts will invalidate it.

Katzer v. L.A. County, 52 Cal. 2d 360

Subsequent Injuries Fund v. Ind. Acc. Comm., 48 Cal. 2d 365

III

Act 9 is special legislation by the very terms of Section 1 of the Act itself. "It does not uniformly apply to and operate on all persons and things within the state." (*Martin v. Sup. Ct.* (1924), 194 Cal. 93, 99.)

Article IV, Section 25, of the California Constitution (1879) prohibits the Legislature from enacting specified kinds of local or special laws; followed in subsection 30 by the catch-all prohibition of all special laws when general laws "can be made applicable".

Since a general law exists relative to contribution (C.C.P. Sec. 850 et seq.), is there any reason, however paper-thin, to indicate a valid classification exists, to which a general law could not be made applicable?

Generally, the test is whether or not it is impossible or impracticable to use a more general enactment.

Cf., *Ventura County Harbor Dist. v. Bd. of Supervisors,* 211 Cal. 271, 279

Higgins v. Johnson County, 112 Pac. 2d 128; 153 Kans. 560

Reasonable classification can always be made without violating the constitutional provision. (Webb v. Adam, 123 S.W. 2d 617, 621; 180 Arkansas 713.) It is said that the characteristics upon which classification is based must peculiarly require special treatment. (*Mansur v. City of Sacramento,* 39 Cal. App. 2d 426, 430; *Darcy v. Mayor,* 104 Cal. 642, 645, 648.) There must be a substantial distinction between the situation embraced in such special law and all other similar situations excluded. If there is not such a difference, the act is invalid.

Cf., *Franchise Motor Assn. v. Seavey,* 196 Cal. 77, 81

Hollman v. Warren, 32 Cal. 2d 351, 357

Austin v. Lambert, 11 Cal. 2d 73

In re *Washer,* 200 Cal. 598, 605

In re *Brady,* 65 Cal. App. 345, 351, 355

Turner v. County of Siskiyou, 109 Cal. 332

Pacific Indemnity Co. v. Myers, 211 Cal. 635, 643

Van Harlingen v. Doyle, 134 Cal. 53, 57

City of Pasadena v. Stimson, 91 Cal. 238, 249, 252-253

Mordecai v. Bd. of Supervisors, 183 Cal. 434, 437, 439

In re *Boehme,* 12 Cal. App. 2d 424, 430

Estate of Tetsubimi Yano, 188 Cal. 645, 655

Mojave River Irr. Dist. v. Sup. Ct., 202 Cal. 717, 726-727

Consol. P. & P. Co. v. Wayne Allen, 18 Cal. 2d 63

In the last case cited, at page 69, the court noted, the Legislature had passed a general act on the very subject matter, saying, "We then have the legislature itself deciding that a general statute is applicable to the subject covered by the special act." The special act was held invalid under such circumstances.

IV

Although often overlooked, California Constitution, Article I, Section 21, provides "*No class* of citizens shall be granted privileges or immunity which, upon the same terms, shall not be granted to all citizens." A.B. 9 would grant the citizens of Los Angeles in their corporate capacity and the defendants such special privilege, while denying it to all others under similar circumstances when claims are paid before judgment.

Where court procedures are concerned, the Supreme Court has not hesitated to hold similar special acts invalid, as shown in the cases cited above.

V

We reluctantly conclude that the law in question is prohibited special legislation and that no valid basis of classification is shown to exist. The single disaster which occasioned A.B. 9 does not present a jural situation to which a general law could not be made applicable. (Article IV, Section 25, Clause 30.) No constitutional or natural or intrinsic differences between the parties involved and the whole remainder of individuals

or classes of potential joint tortfeasors within the state to which A.B. 9 does not apply is established, bearing upon the legal relations involved.

VI

Holding as we do that A.B. 9 is invalid, it does not of necessity follow that some rights of subrogation do not exist. These, however, must depend upon the facts developed in individual cases. The equitable rights of the City to sue upon any claim to which it holds an equitable or actual assignment is undoubted. (5 Cal. Jur. 2d, p. 366, Sec. 71.) A cause of action arising out of a violation of a right of property can be transferred. (Civil Code Sec. 953, 954.)

The City of Los Angeles, as a property owner of the Baldwin Hills Dam, the public works connected therewith, and of the other public property involved in the disaster, itself has a cause of action against any defendant for the injury to its property and for the costs and expenses proximately incurred by reason of any tort if the allegations of the Complaint herein are established.

California law already recognizes the distinction between the liabilities of alleged joint tortfeasors, *inter se,* distinguishing between primary and secondary negligence. This distinction grew up in the law of municipal corporations. Out of the general tort liability statutes, a city is liable for injuries caused by the dangerous and defective condition of its property. If such damages or defects are caused by others, its liability may arise by failure after notice to report the same. Though, in respect to third parties, both the City and the one who has caused the damage or defect may be joint tort-

feasors, the City has a right of action over and against the one guilty of primary negligence. Many late cases have come to recognize this right of *indemnity,* which is a special form of "contribution". (*Pierce v. Turner,* 205 Cal. App. 2d 264, 267-268.) In California we must regard the nonstatutory law of contribution to be in the process of development. In equity, certain principles have been well established. A right of contribution arises upon payment of the joint obligation where A meets more than his share of the common obligation of A and B. (18 C.J.S., page 7, sec. 4.) One who has satisfied the joint obligation is entitled to contribution notwithstanding he paid through his insurance carrier.

Wold v. Grozalsky, 14 N.E. 2d 437, 277 N.Y. 364, affirming 296 N.Y.S. 690

Horton v. Continental Casualty Co., 34 S.E. 2d 607, 72 Georgia App. 594, transferred 33 S.E. 2d 697, 199 Georgia 220

Carter v. E.T. & W.N.C. Transport. Co., 243 S.W. 2d 505, 507, 35 Tenn. App. 196

The one making payment must himself have been under legal obligation to pay. (*Berylwood Invest. Co. v. Graham,* 43 Cal. App. 2d 659.) If a legal obligation exists, it is said to be unnecessary that that be expressed by the use of suit or judgment (18 C.J.S. 8, para. 4, Notes 54, 55), and the fact that the payment has been made as the result of a compromise does not destroy the right (18 C.J.S. p. 8, Sec. 4, Note 50). Upon the public policy doctrine, the California courts have said that there is no right of contribution (apart from statute) where there was concurrent negligence. (*Smith v. Fall River Bend Union High School Dist.,* 1 Cal. 2d 331; *Augustus v. Bean,* 56 Gal. 2d 270.)

But this seems applicable now only where there is a sharing of primary negligence.

The Legislature having recognized that there is a right of contribution between joint tortfeasors of enactment of C.C.P. 875-880, we feel reasonably certain that the policy now is, that the law will consider the equities between wrongdoers. As is stated in 18 C.J.S., p. 15 *et seq.*, Sec. 113, there are many exceptions to the strict rule against contribution between joint tortfeasors. In the work last cited (186, p. 16, Sec. 11-b (1), (2)) it is said: "The rule does not apply where the joint tortfeasors are not in *pari delecti* as to each other or where the injury has resulted from violation of a duty which one owes the other, or where the liability of the joint tortfeasor who has been compelled to pay arises merely from negligent acts of omission on his part, and the proximate cause of the injury consists in active, positive acts on the part of the other joint tortfeasors."

VII

In a declaratory relief action, a general demurrer under the ordinary rules cannot be sustained if the complaint discloses the existence of a controversy, irrespective of the merits of the controversy itself. Where the sole controversy involves the disputed claim of the parties relative to validity or application of the statute, the proper procedure is obscure. Thus, it has been held not prejudicially erroneous to sustain the general demurrer and to dismiss the cause where, although there is a controversy, plaintiff's contentions cannot be sustained.

Sinclair v. State of Cal., 194 Cal. App. 2d 397, 400

Levy v. Firks, 222 Cal. App. 2d 429, 437

Haley v. L.A. County Flood Control Dist., 172 Cal. App. 2d 285, 292-3

It has been held that the declaration should not rest in inference, and that it is proper to make such declaration in connection with a demurrer:

Wilson v. Civ. Serv. Comm., 224 Cal. App. 2d 340, 345; with a motion to dismiss:

Essick v. City of L.A., 34 Cal. 2d 314;

Maguire v. Hibernia S. & L. Soc., 23 Cal. 2d 719, 728-731;

or by a motion for judgment on the pleadings, which to all intents and purposes is a general demurrer:

Wilson v. Bd. of Retirement, 156 Cal. App. 2d 195, 201-202.

The Court is of the opinion that upon the file, briefs and argument herein, the general demurrer can be considered also as a motion for judgment on the pleadings, that plaintiff's contententions cannot be sustained. We shall, therefore, make Conclusions of Law, and enter a judgment which will incorporate them as the declaratory relief sought, and declare "that plaintiff is not entitled to the declarations in its favor, which it seeks."

Essick v. City of L.A., 34 Cal. 2d 614, 624-625

ORDER

Pursuant to the foregoing, the Court now makes the following Order:

1. The motions to strike are denied.

2. The demurrer upon the ground that another action is pending between the parties is overruled.

3. The general demurrer is overruled.

4. The Court concludes that Statutes 1964, First Extraordinary Session, Chapter 1, known as A.B. 9, is void in that the same constitutes special legislation based upon invalid classification and in that the same purports to grant special privileges or immunities to one class of litigants to the exclusion of others generally; and hence, plaintiff is not entitled to the declaration of validity it seeks.

5. That this declaration is the declaratory relief sought herein, and that Conclusions of Law will be drawn accordingly.

6. That the defendants are entitled to judgment incorporating such Conclusions of Law as the declaratory relief sought, together with their costs of suit. December 6, 1965

/s/ LEON T. DAVID
Leon T. David, Judge

Conclusions of Law and Judgment.

Superior Court of the State of California, for the County of Los Angeles.

City of Los Angeles, etc., et al., Plaintiffs vs. Standard Oil Company of California, etc., et al., Defendants. No. C-858622.

Whereas in the above-entitled cause upon general demurrer, oral argument and briefs of the parties there was tendered to this Court the issue of the validity of Statutes 1964, Chapter 1, First Extraordinary Session (A.B. 9) as the only substantive issue, the Court having ruled adversely to the defendants as to other matters of pleading, the Court now makes the following Conclusion of Law:

1. That Statutes 1964, First Extraordinary Session Chapter 1 (A.B. 9) is void and ineffective for any purpose, and hence plaintiff is not entitled to the declaration of validity it seeks.

Wherefore, the Court enters the following judgment:

1. The Court incorporates herein the Conclusion of Law herein above made as a term of this Judgment, and declares that such Conclusion of Law is the declaratory relief to which the parties are entitled.

2. That the defendants have their costs of suit, taxed in the sum of $ .....

The Clerk is ordered to enter this Judgment.
December 6, 1965.

/s/ LEON T. DAVID
Leon T. David, Judge

In the District Court of Appeal of the State of California, Second Appellate District, Division Three.

MINUTES OF JUNE 11, 1968

City of Los Angeles vs Standard Oil Co. Civil No. 30751.

THE COURT:

Two petitions for rehearing denied.

Clay Robbins, Jr., Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the preceding is a true and correct copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of this Court this .... day of Sep 25, 1968 A.D. Clay Robbins, Jr., Clerk. By H. W. Cummingham, Deputy Clerk.

Order Denying Hearing After Judgment by the Court of Appeal, 2nd District, Division 3, Civ. No. 30751.

In the Supreme Court of the State of California in Bank.

Filed July 10, 1968.

City of Los Angeles et al. v. Standard Oil Company of California.

Respondent's petition for hearing DENIED.

Mosk, J., is of the opinion that the petition should be granted.

Traynor
Chief Justice

I, William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of the Court as shown by this the records of my office.

Witness my hand and the seal of the Court the 20th day of September, 1968.

William Sullivan, Clerk

By K. Hawkes
Deputy Clerk

STATUTES OF CALIFORNIA

Passed at the 1964 First Extraordinary Session of the Legislature

CHAPTER 1

An act relating to contribution among joint and several tortfeasors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 14, 1964. Filed with Secretary of State February 14, 1964.]

The people of the State of California do enact as follows:

Section 1. This act is applicable only to injuries to person or property and wrongful deaths resulting from the failure of the Baldwin Hills Dam and Reservoir in the City of Los Angeles on December 14, 1963.

Sec. 2. The right of contribution provided by this act is in addition to any other rights of contribution, and any other remedies, that exist.

Sec. 3. (a) Where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them which shall arise when one tortfeasor has discharged by payment the common liability or has paid more than his pro rata share thereof, although judgment has not been rendered against all or any of them in an action on the tort.

(b) Such right of contribution shall be administered in accordance with the principles of equity.

(c) Such right of contribution shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any tortfeasor be compelled to make contribution beyond his own pro rata share of the common liability.

(d) There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person.

(e) A liability insurer who by payment has discharged the common liability of a tortfeasor shall be subrogated to his right of contribution.

(f) This act shall not impair any right of indemnity under existing law, and where one tortfeasor is entitled to indemnity from another, there shall be no right of contribution between them.

(g) This act shall not impair the right of a plaintiff to satisfy a judgment in full as against any tortfeasor judgment debtor.

Sec. 4. (a) The pro rata share of each tortfeasor shall be determined by dividing the entire common liability equally among all of them.

(b) Where one or more persons are liable solely for the tort of one of them or of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them.

Sec. 5. Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith to one or more of a number of tortfeasors claimed to be liable for the same tort:

(a) It shall not discharge any other such tortfeasor from liability unless its terms so provide, but it shall

reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater; and

(b) It shall discharge the tortfeasor to whom it is given from all liability for any contribution to any other tortfeasors.

Sec. 6. (a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, a judgment for contribution may be entered by one such tortfeasor judgment debtor against the other tortfeasor judgment debtors by motion upon notice. Notice of such motion shall be given to all parties in the action, including the plaintiff or plaintiffs, at least ten (10) days before the hearing thereon. Such notice shall be accompanied by an affidavit setting forth any information which the moving party may have as to the assets of defendants available for satisfaction of the judgment or claim for contribution.

(c) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(d) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among

such defendants in determining their right to contribution.

Sec. 7. Inasmuch as it appears to the Legislature that an actual controversy respecting the constitutionality of this act exists, and that failure to resolve this controversy at an early date will likely frustrate the purposes of this act, any person or entity against whom has been asserted any claim arising out of the event described in Section 1 and who alleges that if he were to pay all of such claim, he would expect to seek contribution from another or others pursuant to this act, may bring an action. Such action shall have priority as do other actions for declaratory relief pursuant to Section 1062a of the Code of Civil Procedure.

Sec. 8. Statutory definitions and rules of construction that would be applicable to this act if its provisions were part of Title 11 of Part 2 of the Code of Civil Procedure shall be applicable to this act.

Sec. 9. If Section 1 of this act is held invalid, this entire act is invalid. If any other provision of this act or the application thereof to any person is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

Sec. 10. This act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect.

The facts constituting such necessity are:

On December 14, 1963, a dam and reservoir, located in the Baldwin Hills area within the City of Los Angeles, failed and more than 200 million gallons of water flooded hundreds of dwellings and commercial buildings, with more than 2,000 persons suffering severe damage to their property. The losses aggregated many millions of dollars and the County of Los Angeles has been declared by the President of the United States to be a disaster area.

The victims of the flood are in urgent need of funds to mitigate the hardships which they are suffering and to restore the damaged homes and business properties. The remedies provided by this act are necessary to cope with this situation and must be available immediately.

Part 2 of the Code of Civil Procedure of the State of California.

TITLE 11. RELEASES FROM AND CONTRIBUTION AMONG JOINT TORTFEASORS

875. (a) Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as hereinafter provided.

(b) Such right of contribution shall be administered in accordance with the principles of equity.

(c) Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof. It shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any tortfeasor be compelled to make contribution beyond his own pro rata share of the entire judgment.

(d) There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person.

(e) A liability insurer who by payment has discharged the liability of a tortfeasor judgment debtor shall be subrogated to his right of contribution.

(f) This title shall not impair any right of indemnity under existing law, and where one tortfeasor judgment debtor is entitled to indemnity from another there shall be no right of contribution between them.

(g) This title shall not impair the right of a plaintiff to satisfy a judgment in full as against any tortfeasor judgment debtor.

876. (a) The pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment equally among all of them.

(b) Where one or more persons are held liable solely for the tort of one of them or of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them.

877. Where a release, dismissal with or without prejudice or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort—

(a) It shall not discharge any other such tortfeasor from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater; and

(b) It shall discharge the tortfeasor to whom it is given from all liability for any contribution to any other tortfeasors.

878. Judgment for contribution may be entered by one tortfeasor judgment debtor against other tortfeasor judgment debtors by motion upon notice. Notice of such motion shall be given to all parties in the action, including the plaintiff or plaintiffs, at least 10 days before the hearing thereon. Such notice shall be accompanied by an affidavit setting forth any in-

formation which the moving party may have as to the assets of defendants available for satisfaction of the judgment or claim for contribution.

879. If any provision of this title or the application thereof to any person is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application and to this end the provisions of this title are declared to be severable.

880. This title shall become effective as to causes of action accruing on or after January 1, 1958.

SUPREME COURT, U. S.

FILED
NOV 20 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968

No. 609

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,

Appellant,

vs.

CITY OF LOS ANGELES, a municipal corporation, and DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,

Appellees.

On Appeal From the Court of the State of California, Second Appellate District.

Motion to Dismiss Appeal or, in the Alternative, to Affirm the Decision of the California Court of Appeal.

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SUBJECT INDEX

	Page
Introduction	1
Analysis of the Statute Involved	2
1. Purpose—Emergency Flood Relief Legislation	2
2. The Legal Problem	3
3. The Solution Afforded by Assembly Bill 9	3
4. The Effect of Assembly Bill 9 on Defendants	4
No Substantial Federal Question Is Presented for the Reason That No Constitutionally Protected Right of Defendant Standard Oil Company of California Has Been Impaired or Abridged	5
No Substantial Federal Question Is Presented for the Further Reason That Assembly Bill 9 Does Not Violate the Bill of Attainder Clause of Article I of the Constitution	6
The Appeal Should Be Dismissed or, in the Alternative, the Decision of the California Court of Appeal Should Be Affirmed for the Reason That Assembly Bill Does Not Violate the Equal Protection or Due Process Clauses of the Fourteenth Amendment	7
Conclusion	11

TABLE OF AUTHORITIES CITED

Cases	Page
Augustus v. Bean, 56 Cal. 2d 270, 363 P. 2d 873	5
Bolling v. Sharpe, 347 U.S. 497	10
Chase Securities Corp. v. Donaldson, 325 U.S. 304	6
Collett, Ex Parte, 337 U.S. 55	6
Denver & R.G.W.R. Co. v. Trainmen, 387 U.S. 556	6
Glona v. American Guarantee Co., 391 U.S. 73	10
Levy v. Louisiana, 391 U.S. 68	10
McLaughlin v. Florida, 379 U.S. 184	10
Moray v. Doud, 354 U.S. 457	10
Salsberg v. Maryland, 346 U.S. 545	8
Schneider v. Risk, 377 U.S. 163	10
South Carolina v. Katzenbach, 383 U.S. 301	9
Williamson v. Lee Optical of Oklahoma, 348 U.S. 483	9

Statutes	
Assembly Bill 8	7
Assembly Bill 9	2, 3, 4, 5, 6, 7, 9, 10, 11
Assembly Bill 9, Sec. 10	2
California Code of Civil Procedure, Secs. 875-880	3, 5
United States Constitution, Fourteenth Amendment	7

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On Appeal From the Court of the State of California, Second Appellate District.

Motion to Dismiss Appeal or, in the Alternative, to Affirm the Decision of the California Court of Appeal.

Introduction.

Appellees, the City of Los Angeles and the Department of Water and Power of the City of Los Angeles, herewith respectfully move this Court to dismiss the appeal of Standard Oil Company of California on the ground that it does not present a substantial federal question. In the alternative, appellees move this Court to affirm the decision of the California Court of Appeal.

Analysis of the Statute Involved.

1. Purpose—Emergency Flood Relief Legislation.

The California statute involved (herein called Assembly Bill 9) is identified in Appellant's Jurisdictional Statement at page 3, and the full text of the statute is set forth at pages 44 to 48 of Appellant's Appendix. By its terms, Assembly Bill 9 was enacted as an emergency measure to afford disaster relief to the victims of a flood resulting from the failure of the Baldwin Hills Dam in the City of Los Angeles.

Section 10 of the Bill reads:

> "This Act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. Facts constituting such necessity are:
>
> "On December 14, 1963, a dam and reservoir, located in the Baldwin Hills area within the City of Los Angeles, failed and more than two hundred million gallons of water flooded hundreds of dwellings or commercial buildings, with more than 2,000 persons suffering severe damage to their property. The losses aggregated many millions of dollars and the County of Los Angeles has been declared by the President of the United States to be a disaster area.
>
> "The victims of the flood are in urgent need of funds to mitigate the hardships which they are suffering and to restore the damaged homes and business properties. The remedies provided by this Act are necessary to cope with this situation and must be available immediately."

2. The Legal Problem.

At the time of the Baldwin Hills Dam failure, the rule concerning contribution among joint tortfeasors was controlled by California Code of Civil Procedure Sections 875-880, the text of which appears in Appellants' Jurisdictional Statement at pages 49-51. Under Sections 875-880, contribution could be had among joint tortfeasors only after judgment. Therefore, the parties potentially liable for damages to the victims of the Baldwin Hills Dam disaster were reluctant to settle claims with disaster victims prior to judgment because doing so would deprive them of any potential right of contribution from co-tortfeasors. This would have resulted in protracted delay in settling claims with the flood victims. As stated by the trial court [Clk. Tr. p. 56]:

> "The determination of ultimate responsibility for injury and damages required detailed future investigation and scientific opinion. . . . It was obvious that in the ordinary course of events, the legal liability to property owners and injured parties would take many months, if not years, to determine in the ordinary litigation processes."

The resulting delay in payment of claims would have increased and prolonged the hardship and suffering of the flood disaster victims.

3. The Solution Afforded by Assembly Bill 9.

In recognition of the need for the immediate payment of funds to flood victims to relieve and mitigate hardship, the California Legislature enacted Assembly Bill 9 in order to permit any potential tortfeasor, including Appellant Standard Oil of California, to settle

and pay any dam disaster claimants prior to judgment without forfeiting any right of contribution against any other possible co-tortfeasor. In reliance upon this statute, Appellees, the City of Los Angeles and the Department of Water and Power of the City of Los Angeles, settled and paid claims of flood disaster victims in an amount exceeding twelve million dollars.

4. The Effect of Assembly Bill 9 on Defendants.

The sole effect of Assembly Bill 9 is to permit Appellees or any other potential tortfeasors involved in the Baldwin Hills flood disaster to pay injured claimants prior to judgment without forfeiting the right of contribution against any other possible tortfeasors.

Assembly Bill 9 does not adjudicate the rights of any parties. It does not determine the liability of any party for the Baldwin Hills Dam failure. It does not deprive any person of the right to a judicial determination of all issues affecting that person's liability. No person can be found liable as a tortfeasor (either joint or several) except after a trial on the merits as to all issues. In the event of such a trial, the substantive rules of tort liability, the rules of pleading and procedure, and the rules of evidence remain the same as before and are unaffected by Assembly Bill 9. The sole effect of Assembly Bill 9 is to permit a right of contribution in favor of any party who has settled and paid claims of flood victims prior to judgment.

Thus, contrary to Appellant's assertion, Assembly Bill 9 is not trial by legislature, it is not in the manner of the Bill of Attainder, and it does not deprive Appellant of any Constitutionally protected rights.

No Substantial Federal Question Is Presented for the Reason That No Constitutionally Protected Right of Defendant Standard Oil Company of California Has Been Impaired or Abridged.

As noted above, the only affect which Assembly Bill 9 has upon the rights of Appellant Standard Oil of California is that it permitted Appellees or any other potential tortfeasor involved in the Baldwin Hills Dam disaster, including Appellant, to make prompt payment of claims to flood disaster victims prior to a final adjudication without forfeiting any right of contribution against any person subsequently determined to be a joint-tortfeasor.

The California Supreme Court has held that a joint tortfeasor does not have a Constitutionally-protected, vested right to application of the contribution statutes as they existed at the time the tort was committed. Thus, in *Augustus v. Bean,* (1961) 56 Cal. 2d 270, 363 P. 2d 873, the California Supreme Court held that California Code of Civil Procedure Sections 875-880, which became effective on January 1, 1958, were applicable to a case in which the accident occurred in 1956, but the judgment determining liability did not occur until April of 1958. The California Supreme Court stated at 56 Cal. 2d 272:

> "Our construction of Section 880 does not give rise to a problem of retroactive impairment of a vested right as of the time of the accident a person did not have a vested right at common law to avoid paying for the consequences of his negligence merely because there were other tortfeasors involved. After the entry of a judgment against the tortfeasors, each of them was liable in full

until the judgment was satisfied, and, if the plaintiff chose to collect from one to the exclusion of another, this was a matter of chance rather than the result of a right which became fixed as of the time of the accident. Contribution statutes, if applied where an accident antedates their enactment, do not retroactively increase the liability existing at the time of the injury, but merely provide a method by which the liability of each of the tortfeasors may be limited to his pro rata share of the judgment. The argument that a vested right would be impaired has been rejected not only in the *Hudson* case (171 Cal.App.2d Supp. at p. 871) but also in decisions of other jurisdictions (citations)."

The foregoing rule is consistent with and does not offend Federal Constitutional principles as enunciated by this Court. "No one has a vested right in any given mode of procedure. . . ." (*Ex Parte Collett,* 337 U.S. 55, at 71.)

See also:

Denver & R.G.W.R. Co. v. Trainmen, 387 U.S. 556, 563;

Chase Securities Corp. v. Donaldson, 325 U.S. 304, 315-316.

No Substantial Federal Question Is Presented for the Further Reason That Assembly Bill 9 Does Not Violate the Bill of Attainder Clause of Article I of the Constitution.

In enacting Assembly Bill 9, the California Legislature made no legislative determinations of fact and in no way invaded or impaired the judicial function.

As noted above, Assembly Bill 9 made no findings of liability for the flood disaster, it made no findings of fact upon which the liability of any party could be predicated, it did not affect or alter any pending judicial action, and it did not alter or affect the substantive or procedural rules of law by which the tort liability of any party would be determined. Therefore, arguments based on the separation of powers and the Bill of Attainder Clause of Article I are lacking in merit. As stated in the decision of the California Court of Appeal:

> "Respondent contends that A.B. 9 is an unconstitutional attempt to exercise judicial powers. A.B. 9 makes no determination of fact against anyone nor does it adjudicate the rights or liabilities of any parties. Therefore, it is unlike the legislative acts considered in the cases relied upon by respondent. (*United States v. Brown,* 381 U.S. 437 [14 L.Ed.2d 484, 85 S.Ct. 1707]; *Taylor & Co. v. Place* [1856] 4 R.I. 324; *Traux-Praer Coal Co. v. Compensation Comr.,* 123 W.Va. 621 [17 S.E.2d 330].)"

The Appeal Should Be Dismissed or, in the Alternative, the Decision of the California Court of Appeal Should Be Affirmed for the Reason That Assembly Bill Does Not Violate the Equal Protection or Due Process Clauses of the Fourteenth Amendment.

It is the thrust of appellant's contention that Assembly Bill 8 violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment for the reason that it applies only to injuries to persons and property and wrongful deaths resulting from the Baldwin

Hills Dam disaster. It is submitted that appellant's contention is without merit.

There is no constitutional requirement which prohibits a State from applying different rules of procedure to different areas or situations as the facts may reasonably require or from enacting legislation applicable to a specific area or situation where immediate action is deemed necessary.

Thus, in *Salsberg v. Maryland,* 346 U.S. 545, this Court upheld a Maryland statute which admitted illegally seized evidence in certain misdemeanor prosecutions in some counties, but excluded such evidence in prosecutions of the same misdemeanors in other counties. This Court stated at pages 550 to 552:

> "The Equal Protection Clause relates to equality between persons as such rather than between areas. . . .
>
> "'[T]here is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt a civil law and its method of procedure for New York City and the surrounding counties, and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the Fourteenth Amendment, be a denial to any person of the Equal Protection of the laws. . . . It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other

> classes in the same place and under like circumstances.' "

The foregoing principle was recently reaffirmed in *South Carolina v. Katzenbach,* 383 U.S. 301, in which this Court upheld the application of certain provisions of the Voting Rights Act of 1965, which confined certain remedies to a small number of states and political subdivisions. This Court held such an approach to be a permissible method of dealing with the problem of racial discrimination in voting, stating at 383 U.S. 328:

> "Congress had learned that substantial voting discrimination presently occurs in certain sections of the country, and it knew no way of accurately forecasting whether the evil might spread elsewhere in the future. In acceptable legislative fashion, Congress chose to limit its attention to the geographic areas where immediate action seemed necessary. See *McGowan v. Maryland,* 366 U.S. 420, 427; *Salsberg v. Maryland,* 346 U.S. 545, 550-554."

See also:

> *Williamson v. Lee Optical of Oklahoma,* 348 U.S. 483, 489.

It is submitted that the foregoing principles apply to the present case. Assembly Bill 9 was enacted for the specific purpose of facilitating early settlement claims on behalf of the victims of the Baldwin Hills Dam disaster. The California Legislature specifically declared that enactment of the statute was necessary in order to mitigate the hardships suffered by the flood victims and to permit them to restore their damaged homes and business properties as speedily as possible.

The need for Assembly Bill 9 did not exist elsewhere, and the Equal Protection and Due Process Clauses of the Constitution did not require the California Legislature to make the remedies afforded by Assembly Bill 9 available throughout the State regardless of such need. Clearly, there is nothing invidious or arbitrary in the present legislative classification.

For this reason, cases cited by respondent involving racial discrimination (*McLaughlin v. Florida,* 379 U.S. 184 and *Bolling v. Sharpe,* 347 U.S. 497); discrimination in favor of native born citizens over naturalized citizens (*Schneider v. Risk,* 377 U.S. 163); distinctions granting legitimate children a claim for the wrongful death of their mother but denying a like cause of action in favor of illegitimate children (*Levy v. Louisiana,* 391 U.S. 68) and statutes depriving a mother of recovery from the wrongful death of her illegitimate child while granting her a cause of action for the death of a legitimate child (*Glona v. American Guarantee Co.,* 391 U.S. 73); and cases granting an arbitrary and continuing competitive business advantage in favor of one business enterprise over all of its competitors (*Moray v. Doud,* 354 U.S. 457) have no application here.

Conclusion.

For the reasons herein set forth, it is respectfully requested that the Appeal of Standard Oil of California be dismissed for the reason that no substantial Federal question is presented or, in the alternative, that the decision of the California Court of Appeal upholding the Constitutionality of Assembly Bill 9 be affirmed.

Respectfully submitted,

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SUPREME COURT, U. S.

NOV 2

IN THE

Supreme Court of the United States

October Term, 1968
No. 609

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,
Appellant,

vs.

CITY OF LOS ANGELES, a municipal corporation, and DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,
Appellees.

On Appeal From the Court of Appeal of the State of California, Second Appellate District.

Opposition to Motion to Dismiss or Affirm.

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SUBJECT INDEX

Page

Opposition to Motion to Dismiss or Affirm 1

TABLE OF AUTHORITIES CITED

Cases

Augustus v. Bean, 56 Cal. 2d 270, 363 P. 2d 873 3

Chase Securities Corp. v. Donaldson, 325 U.S. 304 .. 3

Collett, Ex Parte, 337 U.S. 55 3

Denver & R.G.W.R. Co. v. Trainmen, 387 U.S. 556 3

Salsburg v. Maryland, 346 U.S. 545 3

South Carolina v. Katzenbach, 383 U.S. 301 3

Williamson v. Lee Optical Co., 348 U.S. 483 3

Miscellaneous

Assembly Bill 9 .....1, 2, 3

Statute

United States Constitution, Fourteenth Amendment 3

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vs.

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Appellees.

On Appeal From the Court of Appeal of the State of California, Second Appellate District.

OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

Nothing in appellees' motion undermines the fact that AB 9, applying only to a single specified past event, creates a new cause of action in one party and subjects others to that new cause of action, contrary to the law applying to all other persons in California who might be similarly situated.

Under the general law, appellant is not liable for contribution unless sued by the injured claimant and adjudged liable in that suit. AB 9 creates, and subjects appellant to, a new cause of action for contribution (relating specifically and only to the past Baldwin Hills

accident) at the instance of an admittedly liable tort feasor. Under AB 9 appellees, rather than the victims, select the parties whom they (the appellees) claim to be liable, and in this way may affect the amount of contribution from any other party subsequently found to be jointly or severally liable. Also, appellees alone might determine the extent of damages through the settlement they negotiate with each injured party.

Appellees' assertions (*e.g.*, Motion, pp. 3, 5) that the privileges of AB 9 were equally available to appellant are specious. Since the privileges accorded by that statute required confession of liability as a tort feasor, these privileges were, as a practical matter, limited to appellees just as if AB 9 had specifically identified them and them alone. Thus the privileges were limited not only to one particular past accident, but also to one willing to admit liability for that accident.

Appellees' efforts to justify AB 9 as "disaster relief" do not cure constitutional infirmity. Such statements regarding disaster relief could be made with respect to any statute singling out a particular past accident for the creation of a new and discriminatory right of action.*

The lack of support for appellees' position appears from appellees' reliance on (1) authorities approving post-event changes of procedure made generally applicable (Motion, pp. 5-6), and (2) authorities approving different laws in different areas, though operating alike upon all persons within the specified areas (Motion, pp. 8-9). The case at bar is unlike either.

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*Description of AB 9 as "disaster relief" serves only to confuse. "Disaster relief" is a term normally applied to the extension of monetary or other relief from the public treasury and not to the exceptional adjustment of the rights and liabilities of private parties.

In *Augustus v. Bean* (1961), 56 Cal. 2d 270, 363 P. 2d 873 (Motion, pp. 5-6), the statute was of general application both prospectively and retrospectively hence no equal protection question was involved. Such is not the situation here. AB 9 violates the Constitution not because the failure of appellees' dam antedated its enactment but because it retrospectively conferred a special cause of action on appellees (with all attendant practical benefits—see Juris. State., pp. 13-14) and withdrew correlative immunities from appellant, a discriminatory exception to the general law governing all other past and future tort situations.

Appellees' other authorities similarly illustrate essential differences from the case at bar. Thus, in *Denver & R.G.W.R. Co. v. Trainmen* (1967), 387 U.S. 556, and *Ex Parte Collett* (1949), 337 U.S. 55, the respective majorities of the Court simply upheld a legislative addition to permissible venue. In *Chase Securities Corp. v. Donaldson* (1945), 325 U.S. 304, the Court held that legislative change of statutes of limitation affecting procedural remedies, where lapse of time had not vested a party with title to real or personal property, was not *per se* an offense against the Fourteenth Amendment. No like or analogous question appears in the case at bar.

Nor does AB 9 apply its discrimination along area lines. It does not mark off a specific county for its separate legislative treatment, as in *South Carolina v. Katzenbach* (1966), 383 U.S. 301, or several counties as in *Salsburg v. Maryland* (1954), 346 U.S. 545; nor does it deal with limitation of the practice of a profession in retail stores, as in *Williamson v. Lee Optical Co.* (1955), 348 U.S. 483 (general statute proscribing occupancy of space in retail stores by persons engaged in eye examination or visual care).

Contrary to the decisions cited in the Jurisdictional Statement and unsupported by any decisions cited in appellees' motion, the decision below sustains an extraordinary and obviously discriminatory statute which confers privileges and withdraws immunities as respects a single past accident, in contrast to the rights, privileges and immunities of all persons similarly situated with respect to any other accident, great or small, past or future.

Clearly the question is substantial.

The motion to dismiss or affirm should be denied.

Respectfully submitted,

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Dated: November 19, 1968.

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

STANDARD OIL CO. OF CALIFORNIA *v.* CITY OF LOS ANGELES ET AL.

APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT.

No. 609. Decided December 16, 1968.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.